



John Poling, President
Roy Johnson, Vice-President
Teri Anania, Treasurer
Perry Rowe, Secretary

Statement of the Association of Washington Housing Authorities to the

Capital Project Advisory Review Board (CPARB)
Tom Tierney, Executive Director, Seattle Housing Authority
December 10, 2009

The Association of Washington Housing Authorities (AWHA) represents all 40 housing authorities in Washington State. We provide critical housing and supportive services to low income people in need. We do this in every Washington County.

We appreciate the chance to visit with you to discuss whether the State's alternative public works contracting rules should govern housing authorities (HAs). This question is an important one for housing authorities, large and small, urban and rural. While we are indeed creatures of government, we are more fundamentally the instrumentalities through which the federal government funds and regulates the development, acquisition, operation, and maintenance of housing for low-income people in 3,200 communities across the country.

We are deeply concerned that adherence to the State of Washington's alternative public works contracting rules would result in conflicts with the regulations and programs of our primary funders and regulators. These include the Department of Housing and Urban Development (HUD), which funds and regulates Public and Indian Housing, and the US Department of Agriculture (USDA), which funds and regulates rural and farmworker housing. Many of our projects also include funding from the federal Low-Income Housing Tax Credit program, which results in the creation of a private investment partnership, in which the investor takes ownership of the built project and often provides direction about how the project should be built.

For these and other reasons, Washington State Law has long held our functions exempt from State regulations, unless legislation expressly extends the rules to cover us. Since RCW 39.10 does not mention us, we have had strong reason to believe it does not apply. Now, as you know, contrary to at least two informal opinions of the Attorney's General office and years of established practice, a new Attorney General Opinion of April 24, 2009 held that our development projects should be subject to CPARB review. We are seeking simple legislation that would restore the prior understanding and add development to the list of our exempted functions. And we understand you might consider legislation to expressly add us to your purview. We would ask today that you delay such a move until you can fully discern the implications such legislation would have for our critical federal low-income programs.

HUD and USDA direct our bidding, review and bid acceptance, detailed contract language, contractor payment bonds, labor and wage rates, project budgeting, quality control, uses of funds, and audits. As you come to understand the federal rules under which we operate, we believe you will see that our procurement and contracting functions are tightly controlled by these federal agencies and these controls may often be in conflict with State contracting rules. Here are a few examples:

Clash with “Section 3” Hiring and Contracting with Disadvantaged Firms

HUD requires HA’s, “to the greatest extent feasible,” to direct construction jobs to low income persons who live in our housing communities or in our jurisdictions. HUD also expects HAs to make contracting work accessible to small disadvantaged firms, such as those owned by persons of color or women. These jobs and contracts are a very important way we help our residents and communities prosper. In Seattle, we do this by awarding points for “community benefit” in a competitive procurement. And we add to that, points for “responsible contracting,” which we have put in place at the request of organized Labor. Yet CPARB’s emphasis on “lowest responsive bid” would not allow for either of these programs. RCW 39.10.380. Highlighting this conflict, the State Auditor’s Office informed AWAHA in November that beginning in 2010 it will examine how our Section 3 and other federal required practices clash with the CPARB rules and that we should expect findings.

Advanced Funding Requirement

For project approval, CPARB requires the developer to show it has the “necessary and appropriate funding . . . to complete the project.” RCW 39.10.280(2)(c)(iv). The normal HA project, unlike other public builders, uses funding from multiple sources. Many of them are not committed when the design effort begins.

Job Order Costing

Housing Authorities are allowed by HUD to use a competitive process to retain on-call contractors for indefinite-quantity contracts. We may use these forms of contracts for a number of critical ongoing major maintenance functions, including carpet installation, asbestos abatement, complex electrical and plumbing work, roofing, water and fire restoration, HVAC, and excavation work. We are not among the public bodies specifically authorized in RCW 39.10.420 to use such a contracting method.

Finally, Housing Authorities also differ from other public builders in notable ways that make CPARB oversight inappropriate:

- Housing Authorities have no taxing or levy authority; they cannot charge for the cost of their services and derive no net income from the services they provide.
- Housing Authorities do not appear in any public budget as a line item except for HUD or USDA budgets.
- Housing Authorities as developers get most of their development financing from HUD or USDA.
- Housing Authorities are unique among contracting entities in the State, in that we are created and sustained for the sole purpose of serving low-income people. There is ample precedent for the State to exempt entities dealing with “the poor and infirm” from even its constitutional oversight.

Washington State Housing Authorities have successfully used alternative procurement techniques for years without notable difficulty. They already operate under extensive federal regulation and oversight by other funders. This existing regulation and oversight is adequate, and in important ways can be in conflict with State procurement and contracting rules. Please take the time to understand these conflicts before acting to attempt to bring us under your jurisdiction.

Thank you.